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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 97

THE UNITED STATES OF AMERICA, APPELLANT

vs.

BEN KAPP, BERT COX, TOM WOODS, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED MAY 29, 1937

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1 In United States District Court for the Western District of Oklahoma

No. 11379–Cr.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

BERT KAPP, BERT COX, TOM WOODS ALIAS T. C. WOODS, RALPH MCLARTY ALIAS RALPH MCCLARDY, LEE HOPPER, AND L. L. GREEN, ALIAS LINDSEY GREEN, DEFENDANTS

Indictment (Violation: Section 88, Title 18, U. S. C. A.)

Filed Nov. 29, 1935

At the January 1935 Term of the District Court of the United States for the Western District of Oklahoma, begun and held at the city of Oklahoma City in said District, on the 1st Monday of January in the year of our Lord one thousand nine hundred thirty-five the Grand jurors of the United States of America, within and for said District, having been duly summoned, impaneled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America, committed within said District in said State of Oklahoma, upon their oaths aforesaid, in the name and by the authority of the United States of America, do find and present:

2 FIRST COUNT

That heretofore, to-wit: on or about the 1st day of September 1933, and thence continuously thereafter until the return of this indictment, in Oklahoma City, Oklahoma County, in the Western District of the State of Oklahoma, and within the jurisdiction of this Court, at Westville, Adair County, at McAlester, Pittsburg County, at Okmulgee, Okmulgee County, all in the State of Oklahoma, and at Chicago, Cook County, in the State of Illinois, and at divers other places to the Grand Jurors unknown and hence not herein stated, Ben Kapp, Bert Cox, Tom Woods alias T. C. Woods, Ralph McLarty alias Ralph McClardy, Lee Hopper, and L. L. Green alias Lindsey Green, whose more full, true, and correct names are to the Grand Jurors unknown, did unlawfully, wilfully, knowingly, and feloniously combine, confederate, conspire, and agree together and with each other and with divers other persons whose names are to the Grand Jurors unknown and hence not herein stated, to commit, during the period of time from about the 1st day of September 1933, and continuously thereafter up to and including the date and return of this indictment, a certain offense or offenses against the United States of America, that is to say, violate Section 37 of the Penal Code (Section 88, Title 18, U. S. C. A.), to defraud the United States by violating the

provisions of the Act of Congress approved May 12, 1933, known as Public Act No. 10, of the 73d Congress, entitled "An Act to Relieve the Existing National Economic Emergency by increasing Agricultural Purchasing Power, to Raise Revenue for Extraordinary Expenses Incurred by Reason of such Emergency, to Provide Emergency Relief with Respect to Agricultural Indebtedness, to Provide for the Orderly Liquidation of Joint Stock Land Banks, and for other purposes", and especially Sections 2 and 8 of said Act, now designated Sections 602 and 608, of Title 7, U. S. C. A., and the rules and regulations made and promulgated by the Secretary of Agriculture of the United States to carry out the powers invested in him by said Act; and further to defraud the United States by impairing, obstructing, and defeating the lawful functions of the Secretary of Agriculture in administering and carrying out the powers and duties conferred upon him under the provisions of the aforesaid Act;

3. That the United States was at all times alleged in this indictment making plans to purchase and purchasing pigs from producers under the provisions of said Act, and to make benefit payments under said Act, and that for the purpose of assuring that the benefit payments under said Act would reach the producers the Secretary of Agriculture promulgated on August 21, 1933, rules and regulations to the effect as follows:

"Hogs owned, consigned, or 'planted' by registered market yard traders or speculators are not eligible to benefit payments."

"Name and address of owner of hogs declared eligible to benefit payments, must be furnished processor."

and on September 1, 1933, the said Secretary of Agriculture promulgated further rules and regulations to the effect as follows:

"Beginning Tuesday morning, September 5, no pigs will be purchased for the account of the Secretary of Agriculture unless permission has been granted authorizing the shipment.

"Permits must be secured from authorized processors through commission firms operating at authorized processing points or directly from authorized packers in cases where pigs will be shipped directly to authorized packers. However, pigs may be handled for individual farmers by cooperative shipping associations or by country buyers, providing the farmer supplies with the pigs a letter or telegram constituting the permit authorizing the shipment. Cooperative shipped associations or country buyers also may act on behalf of the original owners in securing permits but the permits must be granted in the name of the original owners.

"Permits obtained, beginning Tuesday, September 5, through commission firms or authorized packers are to be evidenced by letter or telegram to the original owner.

"Beginning immediately, no permits are to be issued by commission firms or by authorized packers to any one other than the original owner of the pigs. In no case are permits to be issued to any one owner for more than 200 head."

which said rules and regulations were in full force and effect during all the dates and times set forth in this indictment, as the defendants then and there well knew.

That is to say, it was the purpose and object of said conspiracy and of said conspirators, and each and all of them, that they,
4 the said Ben Kapp, Bert Cox, Tom Woods alias T. C. Woods, Ralph McLarty alias Ralph McClardy, Lee Hopper, and L. L. Green alias Lindsey Green, should then and there falsely and fraudulently make certain false statements and misrepresentations, with intent to defraud the United States of America and the Secretary of Agriculture of the United States of America, whereby there would be shipped and transported to Rice Brothers, and the Quinn Commission Company, at Chicago, in Cook County, Illinois, for sale to the Secretary of Agriculture and the United States of America, in violation of said rules and regulations promulgated by the Secretary of Agriculture, certain pigs which the said defendants, Tom Woods, Ralph McLarty, Lee Hopper, and L. L. Green, had purchased and would purchase from farmers and producers of pigs in the State of Oklahoma and elsewhere, the exact places being to the Grand Jurors unknown, and said defendants would indicate and disclose, represent and state that the pigs so shipped would be the property of various producers other than the defendants, and which said pigs, when so shipped to the said Rice Brothers and the Quinn Commission Company at Chicago, Illinois, would be sold by them to the United States of America at the premium price to be paid for said pigs under the rules and regulations promulgated by the Secretary of Agriculture hereinabove set forth, and which said pigs would, in truth and in fact, be owned by and be the property of the said Tom Woods, Ralph McLarty, Lee Hopper, and L. L. Green, defendants herein;

That it was the purpose and object of said conspiracy and of said conspirators and each and all of them that they, the said Ben Kapp, Bert Cox, Tom Woods alias T. C. Woods, Ralph McLarty alias Ralph MClardy, Lee Hopper, and L. L. Green alias Lindsey Green, should then and there falsely and fraudulently make certain false statements and misrepresentations, with intent to defraud the United States of America and the Secretary of Agriculture of the United States of America; that they, the said defendants, would state and represent that producers, persons other than the defendants, were the original owners and producers of the pigs that would be shipped and transported and sold to the Secretary of Agriculture of the United States of America when, in truth and in fact, they,
5 the said defendants and each of them, knew that the said pigs were the property of and were owned by the said defendants, Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper, and were not at that time the property of the original producer thereof, and said defendants and each of them, then and there, well knew that the said defendants, Tom Woods, Ralph McLarty, L. L. Green, and Lee Hopper were not entitled to receive premium prices for said pigs so sold and owned by them, the said Tom Woods, Ralph Mc-